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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**EX PARTE**

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Ex Parte – Application by BellSouth Corporation et al. for Authorization to Provide
In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277**

Dear Ms. Salas:

Birch Telecom of the South, Inc. files this *ex parte* in response to two *ex partes* filed by BellSouth on December 11 and 12, 2001, respectively. Birch feels compelled to respond to the continued attempts by BellSouth to confuse the Commission on several issues regarding its reported performance in Georgia, and the integrity of the data underlying that performance. Birch has maintained in several previously filed pleadings and/or *ex partes* that BellSouth is overstating or misstating its performance in several key areas, including flow-through and service order accuracy. Based on the information provided herein, Birch still asserts that BellSouth is misrepresenting the facts to the Commission.

In its December 11 and 12 *ex partes*, BellSouth attempts to draw a nexus between its current application and that of Southwestern Bell (SWBT) in Texas. As Birch was directly and substantively involved in the Texas Public Utility Commission's and then in this Commission's evaluation of SWBT's 271 application for Texas, Birch contends that it is in a far better position than BellSouth to speak to SBC's Texas application as well as SWBT's performance measurements established in conjunction therewith. It is important to recall that Birch supported SWBT's 271 applications in Kansas, Oklahoma and Missouri, in large part due to the framework established through the collaboration and processes in which the parties engaged in Texas, that resulted in SWBT's first successful 271 application. As Birch has continued to maintain throughout the pendency of the current proceeding, BellSouth is nowhere near the commitment to providing a viable operational framework within which CLECs can compete in its region that SWBT had attained prior gaining approval on its application in Texas. For these reasons, Birch strongly urges the Commission to deny BellSouth 271 relief in Georgia and Louisiana until such time that BellSouth has proven that it deserves such relief.

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Service Order Accuracy and Data Integrity Issues

In its December 11 *ex parte*, BellSouth claims that the aggregate service order accuracy results are the only “statistically significant measure” of BellSouth’s performance in this area. (December 11 BellSouth *Ex parte* at p. 4) BellSouth’s claim seems to imply that the disaggregated results for this measurement are not statistically valid. However, in a recent filing for the first SQM Six-Month Review process that is currently underway in Georgia, BellSouth provided, at the request of CLECs, the process for which the sample size is determined. Below is the exact response provided by BellSouth:

To initiate the sample process, a list of all orders completed in the report month is generated. The orders are then listed by the disaggregations specified in the SQM. For each disaggregation, the quantity of completed orders and the error rate for each disaggregation from the previous month are entered into a “Stratified Random Sampling for Proportions” formula. This formula determines the number of orders that are to be reviewed for each disaggregation. Once the sample size for each disaggregation is determined, the specified quantity of orders for each disaggregation is pulled for review.

(Georgia PSC Docket No. 7892-U, *Responses to BellSouth’s Action Items – SQM Workshop* matrix, December 4, 2001):

Interestingly, the first step BellSouth follows in determining a statistically valid sample involves disaggregating all completed orders. Only after the disaggregation does BellSouth determine how many orders should be sampled. BellSouth’s claim that only the aggregate service order accuracy results are the only statistically valid sample is contrary to the very sampling process BellSouth claims to employ.

BellSouth’s sampling process for the service order accuracy measurement also raises concern. For the October results, BellSouth claims a 95.5% aggregate accuracy result in Georgia. What BellSouth fails to disclose is the wholly unorthodox sampling process that was used in October. Upon review of the data, BellSouth sampled a total of only 84 CLEC orders for the *UNE Loop Non-Design < 10 lines No Dispatch* disaggregation.¹ This disaggregation represents the highest volume category of CLEC orders for October. BellSouth’s sample consists of only 0.2% of the monthly UNE-P non-dispatch orders.² The October sample size actually *decreased* by 95 orders (from the September sample volume of 179 or 0.5% of the UNE-P non-dispatch orders), despite increased CLEC volume and poor September performance (79.33%). According to BellSouth’s sampling process established in the Georgia SQM workshop and described above, the

¹ This disaggregation is incorrectly labeled in BellSouth’s Monthly State Summary spreadsheets. This disaggregation includes a sample of all CLEC UNE Non-Design orders (including UNE-P). The word “Loop” is incorrectly inserted into the MSS reports. BellSouth confirmed the mistake in the recent Georgia SQM workshop.

² Total volume taken from missed installation measurement (P-3), which should capture every completed CLEC order.

sample size should have actually *increased* from September to October.³ The fact that the sample size was significantly reduced calls into question *once again* BellSouth's October data and indicates that BellSouth is not following the prescribed business rule for Service Order Accuracy. This most recent example of a string of rather obvious performance measurement fallacies by BellSouth seems to be the rule rather than the exception with the current application.

UNE Non-Dispatch Service Order Accuracy Measurement Comparison

	Service Order Accuracy Sample Size	Service Order Accuracy Result	UNE-P Non-dispatch <10 Lines Order Volume
September	179	79.33%	35,686
October	84	90.48%	41,491

Source: BellSouth Monthly State Summary Reports, UNE P-11 and P-3

In its December 12 *ex parte*, BellSouth compares its Service Order Accuracy problem to the Service Order Accuracy problems of SWBT at the time SWBT's Texas application was approved. Birch rebuts many of BellSouth's arguments in the Birch December 10 *ex parte* filing. However, one issue raised by BellSouth that was not addressed in the earlier Birch *ex parte* deals with the Commission's reliance on downstream SWBT metrics as assurance that Service Order Accuracy errors were being captured in Texas. *TX Order* at ¶ 182. Again, BellSouth does not present, or more likely since BellSouth does not operate in the SWBT territory, BellSouth does not understand, that the Texas downstream performance measurements, relied upon by this Commission, contain specific processes and language that ensure many Service Order Accuracy errors are captured as trouble reports (thus the effects were reflected in downstream measures).⁴ Unfortunately, the comparison to BellSouth's downstream measurements is moot, as BellSouth's downstream measurements do not attempt to capture Service Order Accuracy errors. BellSouth affiant, Ken L. Ainsworth confirms this in his Reply Affidavit at ¶ 31. The only measurement that reflects BellSouth's Service Order Accuracy performance is the Service Order Accuracy measurement – a measurement for which BellSouth has demonstrated chronic poor performance, and for which there is no established monetary penalty for this poor performance.

It is clear to Birch that BellSouth is attempting to make 11th hour explanations for several grave deficiencies in the present application that the Commission simply cannot overlook in its determination of the same. The data BellSouth has used to support this application cannot be substantiated on a consistent basis. In fact, each time a CLEC illuminates an error in BellSouth's data, BellSouth is quick to file a restatement or an *ex parte* to correct such errors, or quick to hastily re-deal the same set of cards in a different stratification to attempt to restate the results. Surely this is indicative of an inherent problem with BellSouth's data. In addition, Birch continues to find inconsistencies in the various explanations that BellSouth has provided to the Commission to supposedly explain away the problems identified by Birch and other CLECs. The bottom line is: BellSouth's reported performance is unacceptable, its repeated attempts to "spin" the facts

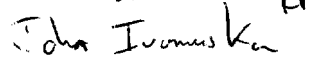
³ BellSouth's formula that determines sample size is based on the volume of completed orders and the previous month's error rate. If the previous month indicates poor performance (and it did – 79.33%), one would expect the sample size to increase to provide better assurance that the results are a reflection of the total population.

⁴ Specifically, in Texas, service order problems are captured in the "Trouble within 10 Days" measurement (PM 35).

cannot be trusted, and the conflicting explanations for data discrepancies show that BellSouth itself has a difficult time explaining such discrepancies.

BellSouth's comparisons of its present application to that filed by SWBT in Texas are far-fetched and unrealistic. Birch has shown many times throughout this proceeding how BellSouth's current application falls far short of the mark set by this Commission for both SWBT and Verizon in previously approved applications. For BellSouth to ask the Commission for approval based on all of the evidence in the record before it is disingenuous. BellSouth's time would be better spent redressing its deficiencies than clouding the record with last minute *ex partes*. Empirical proof of tangible improvement and a willingness to create a viable operational framework within which CLECs can compete would result in Birch support of a BellSouth 271 application. Unless and until such proof is offered and validated, the current application must be denied.

Sincerely,

Handwritten signature of John M. Ivanuska in black ink, with a small 'RF' to the right.

John M. Ivanuska
Vice President of Regulatory & Carrier Relations

cc: Chairman Michael Powell
Commissioner Michael Copps
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Jordan Goldstein
Matthew Brill
Kyle Dixon
Monica Desai
Dorothy Attwood
Jessica Rosenworcel
Renee Crittendon